

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

LOUISVILLE GAS AND ELECTRIC COMPANY)
AND KENTUCKY UTILITIES COMPANY 2009)
APPLICATION FOR APPROVAL OF) CASE NO. 2009-00353
PURCHASED POWER AGREEMENTS)
AND RECOVERY OF ASSOCIATED COSTS)

ATTORNEY GENERAL OF COMMONWEALTH OF KENTUCKY
AND KIUCs' JOINT MOTION TO RECONSIDER

Come now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and Kentucky Industrial Utility Customers, Inc. [hereinafter jointly referred to as "Joint Movants"], and state as follows for their Joint Motion to Reconsider the Commission's Order dated October 21, 2009 in the above-styled matter.

On September 4, 2009 Joint Movants herein tendered their Joint Motion to Dismiss or Alternative Motion to Hold in Abeyance [hereinafter: "Motion to Dismiss"] with regard to the original filing of Louisville Gas & Electric Co. and Kentucky Utilities Co. [hereinafter jointly referred to as the "Companies"]. On October 1, 2009 the Joint Movants filed their Reply to the Companies' Response to the Joint Movants' Motion to Dismiss. On October 21, the Commission issued its Order denying the Joint Movants' Motion to Dismiss. On November 6, the Companies filed their motion to reconsider. The Joint Movants will in a separate pleading file their response to the Companies' Motion to Reconsider.

The PSC's Order dated October 21, 2009 states that the Kentucky Court of Appeals Opinion in *Kentucky Public Service Commission and Duke Energy Kentucky, Inc., f/k/a The Union Light, Heat & Power Company v. Commonwealth Of Kentucky, Ex Rel. Greg Stumbo*, 2007-CA-001635-MR, "held" that the Commission has authority in the context of general rate cases to establish a surcharge for fluctuating and volatile costs.¹ However, the Commission in that Order failed to cite to any specific portion of the Opinion in *Stumbo, supra*, to support its finding in this regard. Indeed, no such holding exists.

The Joint Movants believe that the PSC has misinterpreted *Stumbo, supra*, as well as the holding reached in *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503 (Ky. App. 1990) so that the holdings in both cases are taken out of context. *Stumbo* clearly addressed prior instances of the PSC's use of its necessarily implied authority, citing *National-Southwire* as an appropriate example of the exercise of that authority. The *Stumbo* court held, as a matter of law, that the PSC cannot authorize surcharges without specific statutory authorization.² *Stumbo* never made any distinction between surcharges authorized in the context of a general rate case, or those outside of that context.

Therefore, the Joint Movants respectfully request that the PSC modify those portions of its order dated October 21, 2009 that indicate the PSC does have

¹ Order dated October 21, 2009 at pp. 6-7.

² *Stumbo, supra* at 13. The exact and specific holding of that case is discussed on pp. 19-20.

authority to authorize surcharges in the context of a general rate case, even though no specific statute allows such a surcharge.

Respectfully submitted,

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Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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this 10th day of November, 2009.



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